Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matters of	)	
	)	
Implementation of the	)	193
Telecommunications Act of 1996;	)	CC Docket No. 96-~~163~~
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Reform of Filing Requirements and	)	
Carrier Classifications; and	)	
	)	
Anchorage Telephone Utility, Petition	)	AAD-95-91
for withdrawal of Cost Allocation Manual	)	

COMMENTS OF ANCHORAGE TELEPHONE UTILITY

October 15, 1996

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Summary

The Commission has proposed new rules imposing ARMIS and cost allocation manual ("CAM") filing requirements that basically continue the current approach for these requirements. In adopting the original ARMIS and CAM requirements, the Commission deliberately weighed their benefits and burdens. It repeatedly concluded that these reports and manuals should only be required for Tier 1 LECs -- that is LECs whose annual revenues from regulated operations exceed $100 million for five consecutive years. Yet, without explanation, the adopted rules incorporated a different revenue threshold. Thus, the rules the Notice of Proposed Rulemaking proposes to perpetuate could not be sustained in the first place. Moreover, the Notice fails to provide any reasoned analysis for reversing the Commission's original decision to apply these requirements to only Tier 1 LECs.

Applying ARMIS and CAM requirements on smaller LECs such as ATU will harm their ability to compete in the local exchange market, without providing any real benefit. For ATU, these requirements will add more than $300,000 annually in new expenses, at a time when ATU is facing local exchange competition from the two incumbent interexchange carriers and is trying to cut costs to remain competitive. Further, the Commission's ARMIS and CAM requirements should apply to all local exchange carriers that satisfy the relevant reporting threshold, not solely incumbent LECs.

The Commission should look to the Telecommunications Act of 1996

for determining where to set the reporting thresholds for ARMIS reporting and CAM filing requirements. Under Section 251(f) of the Communications Act, as amended by the 1996 Act, LECs with less than two percent of the nation's access lines may petition for relief of interconnection, unbundling and other statutory requirements. This provision reflects the potential need for relief for smaller incumbent LECs, and provides a realistic benchmark in a competitive environment for determining whether a LEC is "small." To the extent that the Commission continues to require ARMIS reports and CAM filings, they should be required only for LECs with more than two percent of access lines nationwide. This proposal would provide the Commission with ample information on LECs serving the vast majority of access lines and would place the reporting burdens on the companies most able to bear them.

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In attempting to justify the rule amendments proposed in the Notice of Proposed Rule Making, the Commission asserts (para. 46) that "[t]he number of filings required would be reduced by our proposed rules, and raising revenue thresholds may allow certain carriers to avoid filing reports or manuals." At least in the case of the Anchorage Telephone Utility ("ATU"), this statement is wrong.[1/]

In its previous decisions balancing the burdens and benefits of its ARMIS and cost allocation manual ("CAM") requirements, the Commission has consistently concluded that they should apply only to Tier 1 local exchange carriers, which does not include ATU. The Notice in this proceeding essentially brushes aside those previous Commission determinations and, in contrast with the clear intent of the

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1/ The Municipality of Anchorage d/b/a Anchorage Telephone Utility, provides local exchange and exchange access services in the Anchorage, Alaska area. ATU serves approximately 148,000 access lines or about one tenth of one percent of the nation's total.

Telecommunications Act of 1996, proposes instead to impose these burdensome requirements on local exchange carriers that meet a different and lower revenue threshold that would include ATU.

More generally, the Commission's proposed rules would

- subject any number of new local exchange carriers to substantial regulatory burdens;
- adversely affect emerging competition in local exchange services; and
- provide little if any benefit to the Commission or the public.

Accordingly, ATU opposes the rules proposed in the Notice.

Instead, ATU urges the Commission to capitalize on the opportunity presented by the Notice to effectuate true and meaningful reform of its carrier reporting requirements. ATU in particular proposes that detailed accounting systems, CAM filings and audits and ARMIS reports be required only for local exchange carriers serving two percent or more of the nation's access lines. This proposal is consistent with the balancing of burdens and benefits reflected in recently-enacted Section 251(f) of the Communications Act, which permits waiver of certain LEC requirements for smaller LECs. It would also provide the Commission with meaningful information on the telecommunications market, enable the Commission to focus its enforcement efforts where the consequences of non-compliance with its rules are greatest, and relieve smaller local exchange carriers from burdensome reporting and filing requirements of marginal value at best.

I. Applicability of ARMIS and CAM Requirements to LECs.

The Notice confirms (para. 33) that the proposed rules basically would continue the current approach for ARMIS reports and CAM filings and audits. Thus, the Commission is merely proposing to "fine-tune" what the Notice characterizes as the existing rules in light of applicable provisions of the Telecommunications Act of 1996. In response to Section 402(b)(2)(B) of the Act, the Notice thus proposes generally to permit carriers to file ARMIS reports and CAMs annually, rather than requiring certain ARMIS reports and CAM updates to be filed quarterly. Similarly, in response to Section 402(c) of the Act, the Commission proposes to adjust for inflation the revenue thresholds for requiring ARMIS reports, CAM filings and audits, and the most detailed accounting systems.

From the discussions in the Notice, it would appear that the Commission has assumed that these proposals -- and thus the underlying reporting, filing, accounting and auditing requirements -- are applicable to "incumbent local exchange carriers." E.g., Notice, para. 31 and 32. As that term is used in the Communications Act of 1932, it refers to entities providing local exchange service on February 8, 1996, the date of enactment of that Act. Section 251(h)(1) of the Telecommunications Act of 1996, 47 U.S.C. § 251(h)(1).

The actual text proposed in the Notice, however, is not so limited. By its terms, proposed Section 64.903 would require all local exchange carriers --

incumbent as well as new -- that exceed the revenue threshold[2/] to file CAMs and pay for full CAM audits. Similarly, proposed Section 43.21 would require all local exchange carriers -- incumbent as well as new -- that exceed that revenue threshold to file at least some ARMIS reports.[3/]

The Notice takes little if any account of the sweeping changes in local exchange telecommunications prompted and today being facilitated by the Telecommunications Act of 1996. As the Commission itself has repeatedly stated, that Act is designed to promote entry by new competitors into the local exchange market.[4/] In other words, the law is designed to promote market entry by new competitors. The text of the Commission's proposed rules would require each of these new competitors that exceeds the revenue threshold to prepare ARMIS reports, file CAMs and audit their CAM compliance. The actual proposals in the Notice would thus work a potentially vast expansion of the Commission's reporting and filing requirements.

Yet the Commission's explanation of its proposed ARMIS rules, for example, focuses solely on "incumbent" local exchange carriers and is absolutely

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2/ The revenue threshold would be $100 million adjusted for inflation since October 1992. See proposed Section 32.9000.

3/ Some of the ARMIS reports are filed only by price-cap LECs. See, e.g., proposed Sections 43.01(g), (h), (i).

4/ See, e.g., First Report and Order, Implementation of the Local Competition Provisions in the Telecommunications Act of 1996. CC Docket No. 96-98, para. 3 (1996).

silent on any need for ARMIS information from other local exchange carriers,[5/] let alone the additional burdens and costs for those other local exchange carriers to prepare and file those reports. This alone is reason to reject the proposed rules.[6/] Moreover, despite the equally strong deregulatory thrust of the new law, the proposals in the Notice would assure that regulatory burdens would increase in direct proportion to the increase in the number of local exchange competitors resulting from the same new law. Needless to say, something is wrong with this picture.

These infirmities would not be resolved by changing the proposed rules so that they would apply only to incumbent local exchange carriers. Such an approach would saddle incumbent local exchange carriers with regulatory requirements from which their new competitors would be free. The Commission thus would be increasing only the incumbent's costs of doing business and thereby adversely affecting their ability to compete. Ultimately, of course, such impairments to competition erode the very benefits that the Congress and this Commission have sought to foster.

5/ As discussed below, the Commission has also not adequately addressed the need for ARMIS and cost allocation filings by smaller incumbents, either.

6/ Agency action must be based on reasoned decisionmaking. See Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Automobiles Ins. Co., 463 U.S. 29, 52 (1983); see also 5 U.S.C. § 706(2). That is, the "agency's explanation of the basis for its decision must include 'a rational connection between the fact found and the choice made.'" Bowen v. American Hosp. Ass'n, 476 U.S. 610, 626 (1986) (quoting Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Automobile Ins. Co., 463 U.S. 29, 43 (1983)).

Requiring only incumbents -- especially smaller, non-Tier 1 LECs -- to file cost allocation manuals and ARMIS reports would impair fair competition in another important way. ARMIS reports provide a great deal of information about a carriers costs, revenues, facilities and operations. In most competitive businesses, much of this information would be treated as highly confidential because it can give competitors significant insights as to how a company provides its services, achieves its efficiencies and allocates its resources. Indeed, in smaller companies, there are fewer opportunities to aggregate information on costs, revenues, facilities and operations, so that the ARMIS reports are even more revealing. If only incumbents are required to file ARMIS reports and cost allocation manuals, then their new competitors will have the incumbent's highly sensitive business information, but will not have to reveal their own comparably sensitive business information. Especially for smaller incumbent local exchange carriers, the result is unfair[7/], and its potential impact on competition is severe.

II. Absence of Reasoned Analysis For the Proposed Rules.

Even at the detailed level of "fine tuning," the proposals in the Notice are wanting. ARMIS reports and CAM filings and audits are today required of carriers that exceed a specified revenue threshold. The Commission does not dispute that its discussions of the specific revenue thresholds for ARMIS and CAM purposes

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7/ With only 148,000 access lines and a handful of wire centers, ARMIS reports from ATU would be particularly revealing of its cost structure and allocation of personnel and facilities.

have lacked clarity and consistency. Notice, para. 30. Nevertheless, the Commission simply disregards this criticism and finds "the language of our rules in this area clear and dispositive." Id.

But the problems cannot be so easily dismissed. In adopting the ARMIS and CAM requirements, the Commission deliberately weighed the benefits and burdens. It has repeatedly concluded that these reports and manuals should only be required for Tier 1 local exchange carriers[8/] -- that is, local exchange carriers whose annual revenues from regulated operations exceed $100 million for five consecutive years. Importantly, the Commission has reached this conclusion after proposing lower thresholds and then revising the proposal in light of comments from interested parties.[9/] Yet, without any explanation, the texts of the ARMIS and CAM rules incorporate a revenue threshold that is different in two important respects: (a) the text of the rule uses operating revenues from both regulated and unregulated sources, while the Tier 1 test adopted by the Commission looks only to revenues from regulated operations; and (b) the text of the rule demands ARMIS reports and CAM filings and audits when a carrier first crosses the revenue threshold, while the Tier 1

8/ Report and Order, Automated Reporting Requirements for Certain Class A and Tier 1 Telephone Companies, 2 FCC Rcd 5770, 5772 (1987) ("ARMIS Order"); Report and Order, Policy and Rules Concerning Rates for Dominant Carriers, 5 FCC Rcd 6786, 6833 (1990); Report and Order, Separation of Costs of Regulated Telephone Service from Costs of Nonregulated Activities, 2 FCC Rcd 1298, 1304 (1987).

9/ ARMIS Order, 2 FCC at 2772-3.

test adopted by the Commission requires the carrier to exceed that threshold for five consecutive years.

In other words, the rules that the Notice proposes to perpetuate could not be sustained in the first place. A basic tenet of administrative law requires the agency's explanation of the basis for its decision to include a rational connection between the fact found and the choice made.[10/] With regard to ARMIS and cost allocation manual requirements, the connection between the Commission's analysis and the rules it adopted is simply lacking. In other words, there is no basis for requiring non-Tier 1 carriers to file ARMIS reports or CAMs or to audit CAM compliance and the fact that these invalid rules have been on the books for years does not somehow give them validity.

Nor does the Notice provide the reasoned analysis required to reverse its conclusions that ARMIS reports and cost allocation manuals should only be required from Tier 1 LECs.[11/] In previous ARMIS and CAM proceedings, the Commission undertook a careful assessment of the burdens of its proposed requirements. This kind of assessment, however, is totally absent from the Notice is in this proceeding. This consideration is not only a requirement under the Administrative Procedure Act, but also the 1996 Telecommunications Act. Pursuant

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[10/] Bowen v. American Hospital Ass'n, 476 U.S. 610, 626 (1986).

[11/] Instead, the Notice merely concludes that imposing ARMIS and CAM requirements on non-Tier 1 LECs is justifiable because the Commission found "the language of [its] rules ... clear and dispositive." Notice, para. 30.

to Section 10(a) of the Communications Act (as amended by Section 401 of the 1996 Act), the Commission must forbear from applying any unnecessary regulation. Also, pursuant to Section 402 of the 1996 Act, the Commission also must repeal regulations that are not in the public interest.

On the other hand, the Notice greatly exaggerates the benefits of ARMIS reports and CAM filing and audits from non-Tier 1 companies. According to the Notice, the Commission believes that ARMIS reports provide the Commission with "the financial and operating data we need to administer our accounting, cost allocation, jurisdictional and access charge rules, and to preserve our ability to monitor industry developments and quantify the effects of regulatory proposals. Notice, para. 32. But non-Tier 1 companies that would be subject to ARMIS and CAM requirements cannot account for more than an extremely small fraction of telephone operating revenue nationwide. Individually, such non-Tier 1 companies earn about one-tenth of one percent of total telephone revenue. Indeed, as the Commission well knows, the local exchange telephone industry for all meaningful purposes is defined by the Regional Bell Operating Companies, GTE, and Sprint which together account for 90% of access lines nationwide. The remaining 10% of telephone service in the United States is shared by more than 1400 other local exchange carriers. It blinks reality to suggest that data from smaller companies could

meaningfully add to the Commission's ability to carry out the functions it has identified,[12/] and the Notice does not contend that they would.

There are other problems as well with the proposals in the Notice. There remains little if any sense in triggering the burdensome ARMIS and CAM requirements based on a revenue test including both regulated and non-regulated revenues for a single year. While regulated revenues have historically been fairly stable and predictable, revenues from non-regulated businesses have not. Thus, for companies like ATU on the cusp of the filing threshold may well find themselves preparing ARMIS reports and CAM audits in some years, and not reporting or auditing in other years.[13/] Beyond the staffing and resource problems this would cause, the on/off pattern confirms that ARMIS reports and CAM audits by such smaller companies do not contribute to the Commission's industry-monitoring activities.

It also continues to make little sense to base the CAM filing and audit requirements on a revenue threshold. The Notice misses the point when it asserts that the Commission's ability to detect improper cross-subsidization of non-regulated

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12/ The Notice also notes that ARMIS reports "have been a useful source of information" to the FCC with respect to evaluation of certain tariffs, tariff investigations, certain rulemakings and price cap cost adjustments. There remains, however, no indication that such reports from non Tier 1 or other small LECs have contributed to these matters in any meaningful way, or that the needed information could not be obtained directly in a tariff or other proceeding where it is particularly needed.

13/ These changes in filing status will undoubtedly be accelerated as competition reduces the stability and predictability of regulated revenues, as well.

services would be impaired by a filing threshold based solely on regulated revenues. The real issue is not whether the threshold is based on only regulated revenues or on both regulated and non-regulated revenues, but rather whether any threshold based on revenues is appropriate. The cost allocation manual, as its name suggests, deals with the allocation of costs. Revenues, however, do not necessarily correlate with costs, and revenues from non-regulated revenues may have little or nothing to do with the size of a company's local exchange business.

III. Adverse Consumer Effects From ARMIS and CAM Requirements for ATU.

In ATU's case, these problems with the Commission's Notice and proposals take on real significance with marketplace effects. AT&T Alascom and GCI, each serving the Alaska interexchange market, have taken advantage of the Telecommunications Act of 1996 and are now proposing to provide local exchange service in Anchorage in competition with ATU. Each of these two carriers is substantially larger than ATU, and each is well financed and staffed for local exchange competition with ATU.

At the same time, ATU stands on the cusp of the Commission's ARMIS reporting and CAM filing and auditing requirements.[14/] ATU estimates that these requirements would add more than $300,000 annually in new expenses starting as early as next year. This, of course, comes right at the time that ATU is trying to

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[14/] ATU's operating revenues were $102,158,159 for 1994 and approximately $107,900,000 for 1995.

cut costs, improve efficiency and at least maintain rates in the face of impending competition.

ATU believes that the ARMIS reporting and CAM filing and audit requirements should also be borne by AT&T Alascom and GCI. After all, they too would be local exchange carriers so that text of the Commission's proposed rules encompasses them. Moreover, in light of their size, there is even reason to think that statistics on their revenues, costs, operations and facilities might contribute to the Commission's monitoring efforts.

Surely there is no reason to require ATU but not AT&T Alascom or GCI to comply with these reporting, filing and auditing requirements. Indeed, GCI has already demonstrated its willingness and ability to use to maximum advantage in interconnection negotiations the sensitive business information that ATU has been required to file with the state regulatory commission. Since GCI does not make comparable filings, ATU has been severely disadvantaged in their interconnection negotiations.

Nor is there any real need to require ATU to file its CAM with the Commission or to go to the significant expense of conducting a full audit of its compliance with its CAM. ATU has for years filed its cost allocation manual with the Alaska Public Utilities Commission. Each year, interexchange carriers -- now proposing to compete in local exchange service -- have had the opportunity to scour that manual. Neither carrier has complained about ATU's CAM or compliance with it, and the inquiries about the CAM from the carriers and the staff of the Alaska PUC

have been few and have been addressed promptly and satisfactorily. Moreover, neither GCI nor AT&T Alascom has raised any questions concerning ATU's CAM during any of the access charge tariff proceedings before this Commission.

In light of impending competition in local exchange services and continued competition in deregulated services, there is a reasonable likelihood that ATU's revenues for 1996 or 1997 may well fall below the proposed reporting, filing and auditing threshold.[15/] In other words, right as it is trying to cut costs, ATU may well be required to incur the additional expense of learning how to prepare ARMIS reports and support a CAM audit for fiscal years 1994 and 1995, only to find that any experience and expertise with these matters will not be necessary or useful in the future. Especially in light of the fact that ATU accounts for only one-tenth of one percent of access lines nationwide, there is little if any benefit to offset the substantial burdens and expense to ATU -- and the resulting harm to its ability to compete -- by forcing ATU to comply with the ARMIS and CAM filing and auditing requirements.

IV. Proposal: ARMIS and CAM Filings Required For Local Exchange Carriers With More Than Two Percent of the Nation's Access Lines.

The Commission's ARMIS and CAM filing and auditing rules were adopted at a time when local exchange service was highly regulated and generally insulated from competition. The decisions adopting those rules reflect a balancing of burdens and benefits in that context which in particular allowed local exchange

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15/ Based on the index employed in the Notice, ATU is over the Commission's proposed revenue threshold by less than $1 million.

carriers to pass the cost of regulation to their customers. But the Telecommunications Act of 1996 and this Commission's decisions have dramatically changed that context, imposing significant new competitive constraints on costs and rates, and requiring a new balance of benefits and burdens for reporting and monitoring rules. It simply will not do, as the Notice proposes, to continue the approach of the old ARMIS and CAM rules, as if the industry has remained the same.

ATU urges the Commission to look to the seminal 1996 Act itself for guidance. Under Section 251(f) of the Act, incumbent local exchange carriers with less than two percent of access lines may petition for suspension or modification of the expanded interconnection, unbundling and other statutory requirements on incumbents. The provision expressly reflects the potential need for relief for smaller incumbent local exchange companies, and in so doing provides a realistic benchmark in a competitive environment for determining whether an incumbent is "small."

Accordingly, ATU proposes that, to the extent that the Commission continues to require ARMIS reports and CAM filings and audits, they only be required for local exchange carriers with more than two percent of access lines nationwide.[16/] This proposal would provide the Commission with ample information on local exchange companies serving the vast majority of access lines, encompassing urban, suburban and rural areas. It would also put the burden of preparing the

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16/ Should the Commission conclude that Section 402(c) of the 1996 Act requires that the Commission adopt a revenue threshold for ARMIS and CAM reporting requirements, then the revenue threshold should correspond to carriers with more than two percent of the nation's access lines.

ARMIS reports on the companies most able to bear it. This proposal would also focus CAM audits where the consequences of non-compliance are likely to have more widespread and severe effects on competition.

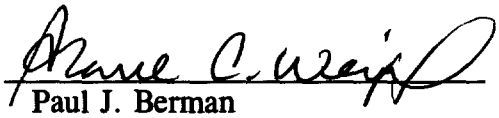
To be sure, the Commission would retain the ability to require smaller local exchange companies to prepare and file information. But at least such requests would be made when the need was sufficiently important to devote specific Commission resources to the matter. This is a far cry from the approach in the Notice of demanding substantial information from relatively small local exchange companies because it may contribute in some marginal and undefined way to Commission monitoring functions.

In sum, the Commission's rigid, old approach to ARMIS and CAM is just that -- old and rigid -- when a new and dynamic industry structure is emerging. No amount of fine tuning will adapt the current rules to the new reality of competition in local exchange services. Rather, the Commission, carriers and the public all need an entirely new approach that takes full account of the costs to smaller companies and the impact on competition from Commission reporting and auditing requirements.

ATU's proposed ARMIS and CAM filing and auditing threshold of two percent of nationwide access lines meets this test.

Respectfully submitted,

MUNICIPALITY OF ANCHORAGE
d/b/a
ANCHORAGE TELEPHONE UTILITY

By: 

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